

**TOLLING AGREEMENT
FOR CLAIMS UNDER THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND LIABILITY ACT
RELATING TO THE GREY EAGLE MINE SITE**

The United States, on behalf of the United States Environmental Protection Agency, contends that it has a cause of action pursuant to Section 107 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 40 U S C §§ 9607, against Newmont USA Limited d/b/a Newmont Mining Corporation ("Newmont") for cost recovery at the Grey Eagle Mine Site located five miles north of Happy Camp in Siskiyou County, California (the "Tolled Claims") Newmont contends that it does not have any such liability

The United States and Newmont ("Parties") enter into this Tolling Agreement to facilitate settlement negotiations between the Parties within the time period provided by this Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein

The Parties, in consideration of the covenants set out herein, agree as follows

1 Notwithstanding any other provision of this Tolling Agreement, the period commencing on September 1, 2002, and ending on June 17, 2003, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims

2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims

3 Newmont shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims. but shall not be prejudiced in raising any such defenses with respect to any other time periods

4 This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable

5 This Tolling Agreement may not be modified except in a writing signed by all the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such

period of time as the Parties agree to in writing

6 It is understood that the United States may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to Newmont, c/o Britt Banks, Esq , 1700 Lincoln Street, Suite 2800, Denver, CO 80203 Where the United States commences suit under this Paragraph, the Tolling Period set forth in Paragraph 1 shall also immediately terminate Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice

7 This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against Newmont or the date on which the United States may file such a complaint, or the nature or scope of any defenses that Newmont may have, except as expressly stated herein

8 This Agreement is not intended to affect any claims by or against third parties

9 Newmont shall preserve and maintain, during the pendency of the Tolling Period, and for a minimum of 90 days after termination of the Tolling Period, at least one duplicate copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure and relating to the Tolleed Claims, regardless of any corporate or document retention policy to the contrary

10 This Tolling Agreement is effective upon execution by Newmont and without the requirement of filing with any Court, and may be signed in counterparts

11 This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein

12 The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document This Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency, and upon Newmont and its successors

SIGNATURES

The United States, on behalf of the United States Environmental Protection Agency consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives on this 17th day of October, 2002

Ellen Mahan
Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

By



Matthew Fogelson
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Newmont consents to the terms and conditions of this Tolling Agreement by its duly authorized representative on this 15th day of October, 2002.

Newmont USA Limited d/b/a
Newmont Mining Corporation

By



Britt D. Banks
Vice President, General Counsel
and Secretary



U.S. Department of Justice

Environment and Natural Resources Division

maf

90-11-3-07886

Environmental Enforcement Section
301 Howard Street
Suite 1050
San Francisco, CA 94105

Telephone (415) 744-6491
Facsimile (415) 744-6476

October 22, 2002

Britt D Banks
Vice President, General Counsel & Secretary
Newmont Mining Corporation
One Norwest Center
1700 Lincoln Street
Denver, CO 80203

Re Grey Eagle Mine Superfund Site

Dear Mr Banks:

Enclosed for your files is a fully-executed copy of the Tolling Agreement entered into between Newmont Mining Corporation and the United States with respect to the Grey Eagle Mine Superfund Site.

Sincerely,

Matthew A Fogelson

encl

cc: Thanne Cox, EPA